

Feb.

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LEISURE DEVELOPMENT
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 77-32

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$100 civil penalty for outdoor burning allegedly in violation of respondent's Section 8.06(3) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Chris Smith and Dave J. Mooney, members, convened at Tacoma, Washington on September 7, 1977. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant appeared by and through its President, Edward P. Miller. Respondent appeared by and through its attorney, Keith D. McGoffin. Court reporting services were provided by Eugene E. Barker, Olympia

1 court reporter.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
8 a certified copy of its Regulation I containing respondent's regulations
9 and amendments thereto. Official notice of respondent's Regulation I is
10 hereby taken.

11 II

12 Sometime prior to January 26, 1977, Mr. Edward P. Miller, President
13 of the appellant, became incapacitated by illness. As a result, he
14 called upon his son, Mr. Edward F. Miller, to come to Washington State
15 from California to take over supervision of an apartment building project
16 under appellant's control.

17 III

18 On or about January 26, 1977, in the course of supervising the
19 construction of an apartment for appellant, the younger Mr. Miller
20 ignited a pile of brush and timber which had been cleared from the site.
21 The site was within an urbanized area as defined by the United States
22 Bureau of the Census. The younger Mr. Miller neither sought nor obtained
23 respondent's population verification prior to igniting the land clearing
24 fire nor was he aware of such an obligation. The senior Mr. Miller was
25 aware of the obligation to obtain respondent's population verification
26 but was confined to his home by illness. The resultant fire was 15 feet

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 by 10 feet by 6 feet, and emitted a plume of smoke. On top of the fire,
2 unbeknownst to appellant, unknown trespassers had discarded pieces of
3 furniture which produced the larger part of the smoke plume.

4 IV

5 Respondent received a telephoned complaint concerning the fire.
6 Respondent's inspector arrived at approximately 11:15 a.m. on the day
7 in question, and observed that the dimensions and contents of the fire
8 were as described above. Respondent's inspector then directed the
9 younger Mr. Miller to extinguish the fire, and this was done immediately.
10 At the younger Mr. Miller's order, dirt was pushed onto the fire with
11 on-site construction equipment and the fire department was called to
12 apply water. Formal Notices of Violation (R-1 and R-2) and a Notice
3 and Order of Civil Penalty No. 3177 (R-3) were served upon appellant.

14 V

15 The appellant has no prior record of any violations of respondent's
16 regulations.

17 VI

18 Any Conclusion of Law hereinafter recited which should be deemed
19 a Finding of Fact is hereby adopted as such.

20 From these Findings the Pollution Control Hearings Board comes to
21 these

22 CONCLUSIONS OF LAW

23 I

24 Respondent's Regulation I, Section 8.02(3) prohibits the outdoor
25 burning of certain prohibited materials. Although furniture placed on
26 appellant's fire is arguably within these prohibited materials, appellant

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 cannot be held responsible where, as here, unknown trespassers added such
2 furniture without appellant's knowledge.

3 Since appellant is now aware that others may make unauthorized
4 additions to its fires, appellant must take precautions to prevent such
5 activity in the future. Failure to do so, in a future case, may result
6 in the conclusion that the burning of such materials was "allowed" by
7 appellant. (See Section 8.02 which makes it unlawful to "cause or
8 allow.")

9 II

10 Respondent's Regulation I, Section 8.06(3) states:

11 It shall be unlawful for any person to cause or allow
12 any outdoor fire for land clearing burning:

13 (3) Within the urbanized area as defined by the United
14 States Bureau of the Census unless the Agency has verified
15 that the average population density of the land within 0.6
16 miles of the proposed burning site is 2,500 persons per
17 square mile or less.

18 In igniting the land clearing fire, within an urbanized area,
19 without first obtaining respondent's verification that population is
20 sparse enough to allow such a fire, appellant violated Section 8.06(3)
21 of respondent's Regulation I.

22 III

23 Under our State's policy of limited outdoor burning, it is not safe
24 to assure that fires may be indiscriminately started on building sites.
25 Before igniting such fires, it is the responsibility of the citizens
26 concerned to become aware of and to adhere precisely to air pollution
27 control rules, such as respondent's Regulation I. Because, however, the
violation committed by appellant is its first offense against respondent's
Regulation 1, and because of appellant's prompt cooperation in

1 extinguishing the fire, the penalty should be suspended for one year.

2 IV

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 From these Conclusions the Pollution Control Hearings Board makes
6 this

7 ORDER

8 The \$100 civil penalty is affirmed, provided, however, that the same
9 is suspended on condition that appellant not violate respondent's
10 regulations for a period of one year after this Order becomes final.

11 DONE at Lacey, Washington, this 22 day of November, 1977.

12 POLLUTION CONTROL HEARINGS BOARD

13 Chris Smith
14 CHRIS SMITH, Member

15 Dave J. Mooney
16 DAVE J. MOONEY, Member
17
18
19
20
21
22
23
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER